

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:98-cr-127

v

HON. JANET T. NEFF

TONY DYER,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on defendant's Motion for Modification or Reduction of Sentence Pursuant to 18 U.S.C. §3582(c)(2) (Dkt 71). On review of the defendant's motion, the Sentence Modification Report, submissions of counsel for defendant and the government, and the original criminal file, the motion is denied because defendant is ineligible for reduction in sentence because the quantity of drugs used to drive the guidelines exceeds 4,500 grams.

Defendant does not argue in opposition to the conclusion of the Sentence Modification Report that the quantity of drugs used to drive the guidelines exceeds 4,500 grams. Moreover, at the time of sentencing, defendant did not challenge or contest the guidelines computation based on an amount of drugs in excess of 4,500 grams or the Court's finding at sentencing that defendant was "responsible for 1.5 kilograms or more of cocaine base." His failure to object at the time of sentencing stands as an admission of the fact of the amount of drugs involved. *United States v Adkins*, 429 F.3d 631, 632-633 (6<sup>th</sup> Cir. 2005).

Accordingly, defendant is ineligible for consideration of modification or reduction of his sentence pursuant to 18 U.S.C. §3582(c)(2) and his motion is DENIED.

Date: June 10, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge